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DEC 6 2001

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DEC 5 2001

No. 00-878

In the Supreme Court of the United States

RICHARD L. MATHIAS, ET AL.,

Petitioners,

v.

WORLDCOM TECHNOLOGIES, ET AL.,

Respondents.

MOTION FOR LEAVE TO FILE POST-ARGUMENT BRIEF AND POST-ARGUMENT BRIEF FOR RESPONDENT ILLINOIS BELL TELEPHONE COMPANY d/b/a AMERITECH ILLINOIS

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MOTION FOR LEAVE TO FILE POST-ARGUMENT BRIEF

Pursuant to S. Ct. Rule 25.6, respondent Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") respectfully moves for leave to file the accompanying post-argument brief. As the Court knows, there are multiple respondents in this case. As a result of a coin toss, counsel for respondents WorldCom Technologies, Inc., MCI WorldCom Network Services, Inc., MCIMetro Access Transmission Services LLC, and Focal Communications Corp. (collectively, "WorldCom") was allotted the oral argument time for the private respondents in this case. As WorldCom's counsel acknowledged at oral argument yesterday, his client's position is in direct conflict with Ameritech's position on the critical issue in the case: whether the federal courts have jurisdiction to adjudicate a *claim* that a state commission has violated federal law by nullifying provisions in commission-approved section 252 interconnection agreements that expressly limit the obligations imposed by those agreements to the requirements of the 1996 Act. Ameritech vigorously disagrees with the position on this issue espoused by WorldCom's counsel at oral argument. Ameritech respectfully submits that the accompanying post-argument brief is necessary to make clear the extent of and bases for Ameritech's disagreement with the views advocated by WorldCom and that the brief would assist the Court in resolving this case.

For the foregoing reasons, the motion for leave to file the accompanying post-argument brief should be granted.

Respectfully submitted.

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POST-ARGUMENT BRIEF FOR RESPONDENT ILLINOIS BELL TELEPHONE COMPANY d/b/a AMERITECH ILLINOIS

Pursuant to Rule 25.6, respondent Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") respectfully submits the following post-argument brief to address — and formally to disavow — certain statements made by counsel for respondent WorldCom during oral argument yesterday. See *Sutton* v. *United Air Lines, Inc.*, 527 U.S. 471, 490 (1999) (citing post-argument briefs addressing points made during oral argument).

WorldCom's counsel conceded at oral argument that WorldCom does not speak for Ameritech. WorldCom's counsel acknowledged that his client's position is in direct conflict with Ameritech's position on the critical issue in the case: whether the federal courts have jurisdiction to adjudicate a *claim* that a state commission has violated federal law by nullifying provisions in commission-approved section 252 interconnection agreements that expressly limit the obligations imposed by those agreements to the requirements of the 1996 Act. Ameritech vigorously disagrees with the position espoused by WorldCom's counsel at oral argument, and seeks through this supplemental brief to make clear how its position differs from that advocated by WorldCom.

The dispute between the private carriers in this case (and in the companion case) involves provisions of section 252 interconnection agreements that govern the reciprocal compensation obligations between the parties. Like Verizon's agreements, the reciprocal compensation provisions of Ameritech's agreements specifically provide that the parties' reciprocal compensation obligations are "As Described in the Act" (J.A. 8a, 14a, 20a, 30a, 38a), which is in turn defined in each agreement to mean "as described in or required by the Act" (J.A. 8a, 13a, 19a, 30a, 37a). Ameritech's claim in this case is that the state commission violated the 1996 Act by nullifying those express statutory-based limitations on its

reciprocal compensation obligations, and it did so in an Order suffused with a discussion of federal law.

Contrary to the arguments of WorldCom, Ameritech contends that, at a minimum, the federal courts have jurisdiction to adjudicate Ameritech's *claim* that the state commission's determination that Ameritech must pay reciprocal compensation on Internet traffic is inconsistent with the reciprocal compensation requirements of the 1996 Act that were expressly incorporated into the parties' approved section 252 agreements. WorldCom's suggestion that this is not a federal claim defies common sense. The Act establishes a specific process for the formation of interconnection agreements and makes the agreements approved as a result of that process "binding" on the parties. Permitting a state commission to substitute its "interpretation" for unambiguous Act-based terms and conditions would render the agreement formation provisions of the Act a nullity.

The federal jurisdiction advocated by Ameritech would not "open the floodgates." Since 1996, telecommunications carriers have entered into thousands of interconnection agreements, yet there are only a few dozen reported cases in federal court regarding interpretative disputes. Overwhelmingly, those cases have involved claims, like the claim asserted here by Ameritech, that a state commission has disregarded provisions of an approved agreement that expressly limit the parties' obligations to the requirements of federal law, and thus hinge on a proper construction of the Act. Within that narrow category of disputes, the vast majority have arisen in precisely the factual context presented here — disputes arising out of a state commission's alleged failure to respect Congress's judgment that the reciprocal compensation requirements of the Act do not apply to Internet traffic. Trivial disputes have not given rise to federal lawsuits. Many section 252 agreements provide for ADR proceedings, which weed out smaller disputes. Only the most substantial disputes are taken to the state

commissions. The parties seek federal review of an even narrower range of state commission determinations in cases where a sizable sum of money is at stake, the competitive consequences are substantial, and federal issues are important. Once the basic federal issues have been sorted out, these disputes will decline still further. In an analogous context, there have been few federal court suits arising out of disputes over the terms of federal tariffs.

WorldCom's contention that Congress intended that some claims arising out of the interpretation of negotiated interconnection agreements belong in federal court and others (like Ameritech's claim in this case) belong in state court is absurd. Interpretive disputes arising out of federally-mandated interconnection agreements that implement federal statutory obligations unquestionably are federal in nature and, like federal tariffs, should be construed under federal law. Such disputes — which require application of the criteria of the 1996 Act (see J.A. 114a-119a) — are a proper subject of federal court review. WorldCom's (and the Seventh Circuit's) suggestion that such disputes should be "bifurcated" between federal court and state court would subvert and undermine Congress's objective of resolving contested issues expeditiously.

Congress simply could not have meant for interconnection disputes arising from the same agreement to run the gauntlet of two separate judicial systems, as WorldCom contends, with some issues litigated first in the federal system and other issues litigated years later in the state system, and with wasteful arguments over which issues fall on one side or another of "the federal-state divide," given "myriad possible fact patterns." World Com Reply Br. in 00-1531 & 00-1711 at 14. It should come as no surprise, therefore, that there is no support whatsoever in the text, structure, or legislative history of the Act for such a byzantine

jurisdictional scheme. Compare *Jackson Transit Authority* v. *Local Division 1285, Amalgamated Transit Union*, 457 U.S. 15, 24 (1982) (finding clear evidence in legislative history of Congressional intent that municipal labor disputes be resolved in state court). Rather, Congress anticipated federal court review over all state commission determinations. See *Bank One Chicago* v. *Midwest Bank & Trust Co.*, 516 U.S. 264, 275-276 (1996) (refusing to fragment jurisdiction under federal statute; "even if the text of [the act] could plausibly be read to create this decidedly inefficient jurisdictional scheme, we would hesitate to attribute such a design to Congress.").

CONCLUSION

The decision of the Seventh Circuit should be affirmed in part and reversed in part and the case remanded with instructions to the courts below to adjudicate Ameritech's claims on the merits.

Respectfully submitted.

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ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CERTIFICATE OF SERVICE

Pursuant to Rule 29.5 of the Rules of this Court, I, Michael E. Lackey, Jr., a member of the Bar of this Court, hereby certify that all parties required to be served have been served. On December 6, 2001, I caused a copy of the foregoing Motion for Leave to File Post-Argument Brief and Post-Argument Brief for Respondent Illinois Bell Telephone Company d/b/a Ameritech Illinois in the above-captioned case to be served on the persons listed on the attached service list by overnight courier, post pre-paid (or by hand where indicated).

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December 6, 2001

VIA MESSENGER
The Honorable Francis J. Lorson
Chief Deputy Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: *Mathias* v. *WorldCom Technologies, Inc.*, No. 00-878

Dear Mr. Lorson:

As per our discussion today, I enclose for filing 40 copies of the page proofs of the Motion for Leave to File a Brief After Argument and the Brief After Argument for Respondent Illinois Bell Telephone Co. and a certificate of service. I will file the same number of replacement printed briefs tomorrow. Also enclosed is an additional copy of the page proofs of the Motion/Brief to be date stamped and returned for our records.

Thank you for your consideration of this matter.

Sincerely,

Michael E. Lackey, Jr.

Enclosures

cc: Counsel of Record (w/enclosures)